to pay the invoice price of the coal, plus ten per cent, but the plaintiff, whose shipments had been taken in this manner, sought to enjoin any such further seizures by the railroad. *Held,* that an injunction should be granted. *Mobile v. Zimmern* (1921, Ala.). 89 So. 475.

The defence to this admitted tort was that the seizures were affected with a public interest, and that the plaintiff had an adequate remedy at law. The question, therefore, was whether the court should take into consideration the balance of convenience, when it would otherwise restrain the threatened tort. As between the plaintiff and the defendant, there is some authority for the view that the balance of convenience should be the deciding factor. *Beidenkopf v. Des Moines Life Ins. Co.* (1913) 160 Iowa, 629, 142 N. W. 434; *Smith v. Rowland* (1914) 243 Pa. 306, 90 Atl. 183; *McCarthy v. Bunker Hill* (1906, C. C. Idaho) 147 Fed. 981, aff. in (1909) 212 U. S. 583, 29 Sup. Ct. 692. Where the general public interest is involved, the courts seem to be more willing to apply this doctrine. *Frost v. City of Los Angeles* (1919) 181 Calif. 22, 183 Pac. 342; *Andrews v. Cohen* (1917) 221 N. Y. 148, 116 N. E. 862; *Booth-Kelly Co. v. Eugene* (1913) 67 Or. 381, 136 Pac. 29. In the absence of this public interest, however, many courts refuse to apply the rule of comparative damage. *Felsenthal v. Warring* (1919, Calif. App.) 180 Pac. 67; *Longton v. Stedman* (1914) 182 Mich. 405, 148 N. W. 738. The instant case, involving a continued trespass, is to be distinguished from the cases involving a nuisance, as a different rule is applied. (1919) 29 YALE LAW JOURNAL, 240. It seems to accept the more general view that the balance of convenience should not control where a continuous trespass is involved. 5 Pomeroy, *Equity* (4th ed. 1919) sec. 1922; (1920) 18 MICH. L. REV. 703; *Hansen v. Crouch* (1920, Or.) 193 Pac. 454.

JURISDICTION—INDIAN COURTS—POWERS OF STATE COURTS IN CONTROVERSIES OVER INDIAN RESERVATION LANDS.—A peacemaker's court had been recognized on the Cattaraugus Indian Reservation. N. Y. Cons. Laws, 1909, ch. 26, sec. 46. This court had "exclusive jurisdiction . . . to hear and determine all questions and actions between individual Indians," residing on the reservation, involving the title to real estate thereon. Sections 5 of the Act gave the state courts power over such actions as were not under the jurisdiction of the peacemakers' court. A controversy arose among certain Seneca Indians. The plaintiff brought suit in a state court to determine her right to certain reservation lands in her possession, alleging that she resided "outside the territorial jurisdiction of the peacemakers' court." On a motion for judgment on the pleadings the complaint was dismissed. *Held,* that the judgment should be affirmed since the complaint did not show that the peacemakers' court was without jurisdiction. *Mulkins v. Snow* (Oct. 25, 1921) N. Y. Ct. of App. Not yet reported; for the opinion below see (1919, Sup. Ct.) 106 Misc. 556, 175 N. Y. Supp. 41.

Tribal Indians have a peculiar status: they are not citizens, and are, as a rule, subject only to federal authority. *United States v. Kagama* (1886) 118 U. S. 375, 6 Sup. Ct. 1109; *Naganab v. Hitchcock* (1906) 202 U. S. 473, 26 Sup. Ct. 667. The federal government derives its power to control them from historic reasons and from its sovereignty over the lands which they occupy. *United States v. Kagama, supra.* When the tribal organization is recognized by the federal government the Indians may regulate and govern their own internal affairs. *In re New York Indians* (1866) 72 U. S. 761. They are, as a general rule, not within the jurisdiction of a state, though residing within its geographic boundaries. *United States v. Hamilton* (1915, W. D. N. Y.) 233 Fed. 685. The state cannot tax their lands. *In re New York Indians, supra.* The Indians cannot, in the absence of an enabling statute, sue in a state court. *Johnson v. L. I. Ry.* (1899) 42 App. Div. 626, 61 N. Y. Supp. 1139. The statute giving the Seneca

Indians such power has not been questioned. N. Y. Cons. Laws, 1909, ch. 26, sec. 54; *George v. Pierce* (1914, Sup. Ct.) 85 Misc. 105, 148 N. Y. Supp. 230. The law recognizing the jurisdiction of the peacemakers' court seems to be declaratory of an existing rule. See *Peters v. Tallchief* (1907) 121 App. Div. 309, 106 N. Y. Supp. 64. This court has been recognized recently by a federal court. *United States v. Seneca Indians* (1921, W. D. N. Y.) 274 Fed. 946, 949. It follows that the state court has only such jurisdiction over Indian affairs as is given by the statute. Since the jurisdiction of the state court is supplementary to that of the peacemakers' court, the allegation by the plaintiff that she resided "outside the territorial jurisdiction of the peacemakers' court" amounted to no more than an opinion that the state court had jurisdiction. In claiming a cause of action under an exception incorporated in the body of a statute, the plaintiff should have negatived the jurisdiction of the peacemakers' court. *Rowell v. Janvrin* (1896) 151 N. Y. 60, 66, 45 N. E. 398, 400.

MARTIAL LAW—EXTENT OF POWER OF GOVERNOR TO DECLARE ITS EXISTENCE.—The Governor of West Virginia proclaimed martial law in Mingo County. The petitioner was arrested for carrying a pistol contrary to orders in the Governor's proclamation, although he was duly licensed to do so by the civil authorities. At the time of the arrest there was no regular military force in Mingo County, but the Adjutant-General, holding a military commission, directed the civil authorities and the *posse comitatus*. The petitioner obtained a writ of habeas corpus. *Held*, that the writ should be sustained, as there was no regular military force in the territory covered by the proclamation. Miller, J., *dissenting*. *Ex parte Lavinder* (1921, W. Va.) 108 S. E. 428.

The governor of a state is the sole judge of conditions requiring a declaration of martial law. *Franks v. Smith* (1911) 142 Ky. 232, 134 S. W. 484; *In re McDonald* (1914) 49 Mont. 454, 143 Pac. 947. But the extent of this power is not settled. See Ballantine, *Unconstitutional Claims of Military Authority* (1915) 24 YALE LAW JOURNAL, 189; Lobb, *Civil Authority Verus Military* (1919) 4 VA. L. REG. 897. He may suspend the civil laws until the exigency is over. *In re Boyle* (1899) 6 Idaho, 609, 57 Pac. 706; *In re Moyer* (1905) 35 Colo. 159, 85 Pac. 190; *United States v. Wolters* (1920, S. D. Tex.) 268 Fed. 69. This is not a denial of due process under the Fourteenth Amendment. *Moyer v. Peabody* (1909) 212 U. S. 78, 29 Sup. Ct. 235. It is also held that the governor and those who act under his authority are not responsible civilly or criminally for acts done while martial law is in effect. *Hatfield v. Graham* (1914) 73 W. Va. 759, 81 S. E. 533; *In re Moyer, supra; Commonwealth v. Shortall* (1903) 206 Pa. 165, 55 Atl. 952. Some West Virginia cases have even held that persons may be arrested outside the zone of martial law and that they may be tried by a military commission, although the civil courts are still open. *Ex parte Jones* (1913) 71 W. Va. 567, 77 S. E. 1029; *State v. Brown* (1912) 71 W. Va. 519, 77 S. E. 243. But there are well-reasoned cases holding that the governor in declaring martial law acts merely as a civil officer of the state and that he must direct the military forces in accordance with the civil laws. *Franks v. Smith, supra; In re McDonald, supra;* cf. 2 Willoughby, *The Constitution* (1910) sec. 727. The decision in the instant case seems to indicate a tendency to depart from former West Virginia decisions. The restriction of the power to a time when a regular military force is in the field is desirable and it is hoped that it may aid in the ultimate adoption as general law of the able dissenting opinions in the extreme West Virginia cases. For proposed legislative reform see Ballantine, *Qualified Martial Law, A Legislative Proposal* (1915-1916) 14 MICH. L. REV. 102, 197.

PERSONS—RIGHT OF MOTHER TO RECOVER FOR DEATH OF ILLEGITIMATE CHILD.—An action was brought by the state on behalf of the mother of an illegitimate